

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH ABRAHAM,	§
	§
Defendant Below-	§ No. 542, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0705004852
Plaintiff Below-	§
Appellee.	§

Submitted: March 6, 2012

Decided: April 3, 2012

Before **HOLLAND**, Chief Justice, **BERGER**, and **JACOBS**, Justices.

**ORDER**

This 3<sup>rd</sup> day of April 2012, upon consideration of appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Kenneth Abraham, filed this appeal from a Superior Court judgment denying his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Abraham's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that, in September 2007, Abraham pled guilty to one count of felony theft. The Superior Court immediately sentenced Abraham to a total period of five years at Level V incarceration,

to be suspended upon his successful completion of the Level V Greentree Program for a period of probation. Among other things, the sentence also ordered Abraham to pay restitution first to his father, Maurice, in the amount of \$40,000 and then to his brother, Baxter, in the amount of \$17,000. Abraham filed a motion for modification of sentence in December 2007, which the Superior Court denied. Thereafter, Abraham filed a motion for postconviction relief, which also was denied. This Court affirmed the Superior Court's denial of postconviction relief on appeal.<sup>1</sup> Abraham again moved for a sentence modification in June 2011. The Superior Court denied the motion and also denied Abraham's request for reconsideration. This appeal followed.

(3) In his opening brief on appeal, Abraham argues that the restitution ordered by the Superior Court must be modified because Maurice Abraham died in 2008 and left him and his brother Baxter as sole heirs to his estate. Thus, according to Abraham, he is entitled to half of the \$40,000 in restitution that he was ordered to pay to his father. Abraham argues that the restitution order, therefore, must be modified to eliminate the restitution owed to his father and to increase the restitution owed to his brother by \$20,000.

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<sup>1</sup> *Abraham v. State*, 2009 WL 387094 (Del. Feb. 18, 2009).

(4) After careful consideration of the parties' respective positions on appeal, we find no abuse of the Superior Court's discretion in denying Abraham's motion for modification of sentence. The death of Abraham's father was not an extraordinary circumstance requiring the Superior Court to modify its sentencing order.<sup>2</sup> Maurice Abraham's death did not eliminate Abraham's obligation to pay restitution in the amount of \$40,000 to Maurice Abraham's estate.<sup>3</sup> How Abraham's restitution obligation is handled by Maurice Abraham's estate is a matter for the estate's administrator and need not be addressed by the Superior Court in Abraham's criminal proceedings.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>2</sup> Del. Super. Ct. Crim. R. 35(b) (2012) (providing that the Superior Court will consider a sentence modification motion "made more than 90 days after the imposition of sentence only in extraordinary circumstances...")

<sup>3</sup> See, e.g., *Kojro v. Sikorski*, 267 A.2d 603 (Del. Super. 1970).